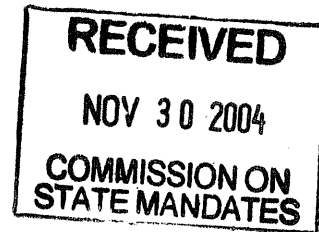


**DEPARTMENT OF
FINANCE****ARNOLD SCHWARZENEGGER, GOVERNOR**

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November 30, 2004

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in the Notice of Reconsideration for Regional Housing Needs Determination dated November 3, 2004, the Department of Finance (Department) submits comments on the following questions:

- Does Chapter 1143, Statutes of 1980, impose a new program or higher level of service within an existing program on cities, counties, or a city and county within the meaning of Article XIII B, section 6 and costs mandated by the State pursuant to section 17514 of the Governments Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the statutory provisions impose costs mandated by the State?
- Have funds been appropriated for this program (e.g., State budget) or are there any other sources of funding available? If so, what is the source?

The Department does not dispute that Chapter 1143 imposed a new program or higher level of service within an existing program on cities, counties, or a city or county within the meaning of Article XIII B, section 6. However, there are no costs mandated by the State pursuant to Government Code section 17514.

The Department also specifically notes that Chapter 227, Statutes of 2004 (SB 1102), makes optional, at the discretion of the local agency, the previously required "analysis of opportunities for energy conservation with respect to residential development." Further, Government Code section 65584.2 clarifies that "A local government may, but is not required to, conduct a review or appeal regarding allocation data provided by the department or the council of governments pertaining the locality's share of the regional housing need or the submittal of data or information for a proposed allocation, as permitted by this article." Thus, any local government costs related to these two activities incurred after August 16, 2004, should no longer be considered as a State-reimbursable due to the enactment of Chapter 227.

Additionally, Government Code section 65584 specifies in subdivisions (a), (c)(1), (c)(2), and (c)(2)(D) that the distribution of regional housing needs shall be based on available data. Accordingly, cities and counties are not required to undertake studies or other activities to acquire or generate additional data.

Significantly, Government Code section 17556 says the Commission on State Mandates shall not find costs mandated by the State if it makes certain specified findings, among them that "the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." (Government Code section 17556, subdivision (d)).

Government Code section 65584.1 reiterates that a city, county, or city and county have such fee authority under section 65104. Section 65584.1 reads in relevant part:

A city, county, or city and county may charge a fee, including, but not limited to, a fee pursuant to Section 65104 to support the work of the planning agency pursuant to this article, and to reimburse it for the cost of any fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose any fee pursuant to Section 66016. This section is declaratory of existing law.

The local government need only have the authority to impose such a fee to bar State reimbursement. The ability to reasonably collect the fee in light of economic circumstances is not relevant. (*Kathleen Connell v. Superior Court of Sacramento, Santa Margarita Water District* (1997) 59 Cal.App.4th 382, 401). Accordingly, this pre-existing fee authority of the cities and counties, clarified by Chapter 227, precludes the Commission from finding that any of the statutory provisions impose costs mandated by the State.

Thus, while funds have been appropriated and paid to cities and counties for this program in the past (Governor's Budgets reflect cumulative total expenditures of over \$9.5 million in reimbursements to Councils of Governments and cities and counties since 1984-85 for the mandates found in Chapter 1143), the regional housing needs determination activity costs incurred by cities and counties with the enactment of Chapter 227 are not required to be reimbursed by the State under Article XIII B of the Constitution.

If you have any questions regarding this letter, please contact Elliott Mandell, Principal Program Budget Analyst, at (916) 322-2263, or Jesse McGuinn, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Mark Hill
Program Budget Manager

Attachment A

DECLARATION OF ELLIOTT MANDELL
DEPARTMENT OF FINANCE
Reconsideration of Regional Housing Needs Determination

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.



Elliott Mandell

11/30/04

Date